

City of Fitchburg Office of Human Resources

Family Medical Leave Act - Medical Insurance Disclosure Agreement

As a City of Fitchburg employee, I have requested and have been granted leave under the provisions of the Family Medical Act hereafter called (FMLA) Under the FMLA, I have been granted a leave of up to twelve (12) weeks over the next twelve (12) months. During this time period, co-payment(s) for my insurance coverage (medical insurance and optional life insurance) will become due. I understand that I am obligated to contribute my co-payment(s) during the leave period.

The City of Fitchburg has agreed to the following optional payment programs for employees who request an FMLA leave.

Please circle option 1, 2, or 3

Option 1.

I agree to have my co-payment deducted from my paid leave time for the entire leave period.

Option 2.

I agree to have my insurance co-payment deducted from my paid leave time. For the period that I will be on unpaid leave. I agree, that upon my return to work, to have double the monthly deduction withheld from my payroll bi-weekly payroll check until I have paid all money due.

Option 3.

I agree to send to the City of Fitchburg before the first of each month my insurance co-payment.

I fully understand that if I choose not to return after the end of the leave, that my employment with the city of Fitchburg will be considered to have been voluntarily terminated, and that the full premium payments for my insurances during the leave period become due to the City of Fitchburg.

By signing below, I acknowledge that I understand and agree to the conditions listed above.

Employee Signature

for the City of Fitchburg

(FMLA INS Form)

Date

On February 11, 2008, the United States Department of Labor issued proposed amendments to the Family and Medical Leave Act ("FMLA") regulations. The FMLA requires employers to provide up to 12 weeks of unpaid, job-protected leave in a year for the birth or adoption of a child; to care for a sick child, parent or spouse; or when an employee has a serious illness. The new draft regulations are **not final or effective**. There is a 60-day comment period expiring on April 11, 2008 for DOL to receive comments. These are proposed. The final regulations may be different. The changes respond to court decisions and the 15 years of history with the statute. Here is a summary of the significant changes the DOL proposes.

Eligibility

The proposed regulations clarify when to count the 12 months and 1250 hours of leave for purposes of determining eligibility, and confirm that an employee may become eligible while on leave. More specifically, the proposed regulations require a determination "as of the date the FMLA leave is to start" instead of the current determination which is made "as of the date the leave commences". Employment periods preceding a break in service of 5 years or more need not be counted unless:

Military service (which currently counts toward the 1250 and one year), or
By written agreement (including but not limited to collective bargaining agreements).

Serious Health Condition

The regs keep the six definitions of "*serious health condition*" but the DOL provided explained two of the regulatory terms:

1. An employee who is incapacitated for more than three consecutive days must receive treatment from a health care provider on two or more occasions within a 30-day calendar period unless there are "extenuating circumstances";
2. An employee with a "chronic condition" would be required to visit a health care provider for the condition at least twice each year.

No changes were proposed to the contradictory "self-treatment" provision for "chronic conditions" which allows for leave even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. See 29 C.F.R. § 825.114(e).

Leave Needed to Care for Family Member

The current regulations when an employee is needed to care for a family member. The draft regulations explain that an employee doesn't have to be the only family member available when she asks for leave to care for a family member.

Definition of Healthcare Provider

The DOL proposes to recognize physician assistants as "*health care providers*".

Medical Certification

The significant proposed changes to the medical certification provisions would allow an employer to obtain more information from health care providers.

Recertification

The regulations now limit an employer's ability to ask for re-certification to situations when there are changed circumstances, an extension request or receipt of information that casts doubt on the employee's stated reason for leave.

Under the draft regulations, the employer may ask for re-certification at least every six months if the employee is absent during that period.

Adequacy of Medical Certification {

The existing regulations allow the employer's healthcare provider to ask for clarification of the medical certification with the employee's OK. The draft regulations permit the employer to contact the employee's healthcare provider directly to ask for clarification of the medical certification, but only after the employer tells the employee in writing describing the information needed because the information is incomplete - there's missing information - or insufficient because it is vague, non-responsive, ambiguous and give the employee 7 days to correct the deficient information on the certification. In addition, the draft regs provide that if the employee does not correct the information or provide HIPAA authorization so the employer can obtain the information, or if the certification deficiency is not remedied, the employer can deny leave.

Content of Medical Certification

The DOL proposes a new medical certification form which contains a significant change directed to the health care provider. It requires specific medical and treatment information from the provider

The proposed regulations make it the employee's the responsibility to provide complete and sufficient certification unless the employee authorizes the employer to have direct communication with her healthcare provider.

Notice by Employees

The current regulations provide that an employee only has to disclose a covered condition to trigger FMLA protection. The new regulations require more including notice that the condition renders the employee unable to work (or needed to care for a family member) - (the employee still doesn't have to mention the FMLA by name or an

anticipated length of absence); if the employee (or family member) intends to visit a health care provider, and the communication to the employer must follow the employer's "usual and customary" procedures for giving notice, except under "unusual situations". For example, an employer can require an employee to call a designated number or a specific individual to request leave.

Notice by Employers

The draft regs change the employer notice provisions:

1. An employer has five business days, instead of the current two business days, to give written notice of eligibility and designation of FMLA leave to an employee;
2. The employer has to give an ineligible employee (a) an explanation of the reason(s) for ineligibility, (b) inform the employee if she has any remaining FMLA leave, (c) provide a statement of the employee's responsibilities (e.g. medical certification).
- (3) If the medical certification is incomplete or insufficient, it must be returned to the employee with a detailed description of what is missing and allow the employee 7 days to cure any deficiency.

Because of a U.S. Supreme Court decision invalidating penalty provisions in the current regulations, the DOL proposes to change them by allowing an employer to designate FMLA leave retroactively with appropriate notice, form and content, if later designation won't cause "harm or injury" to the employee. If the proper notice requirements are not followed, an employer may be liable to the employee for interference with FMLA rights.

Intermittent Leave

The DOL offered no substantive, proposals about unscheduled, intermittent leave. These employees can repeatedly take unscheduled intermittent leave, over nine hours a week, and still not exhaust their allocation of FMLA leave for the year (12 weeks x 40 hours/week = 480 hours). Instead of offering substantive changes in this area, the DOL deletes the "*as soon as practicable*" language (interpreted as "ordinarily one or two business days"). The changes in this section requires notice to an employer "as soon as practicable" and if the employee gives less than 30 days' notice, she has to explain why it wasn't practicable. The existing regulations provide that an employee has to "*attempt to schedule*" the leave so as not to "*disrupt*" the employer's operations. The DOL change requires an employee to make a "reasonable effort" to schedule the leave so as not to "unduly disrupt" the employer's operations.

Light Duty The City of Fitchburg does not allow "Light Duty"

The proposed regulations clarify that if an employee is on "light duty," the employee would not be considered on FMLA leave.

Perfect Attendance Awards

The regulations now prohibit an employer from denying a perfect attendance bonus to an employee on FMLA leave. Many employers found this to be illogical and frustrating and the new regulations proposed to correct this by clarifying that:

- ~ bonuses could be properly "based on the achievement of a specified goal such as hours worked, products sold or perfect attendance"; and
- ~ such bonuses could be denied to employees who have not met the goal because of FMLA leave as long as employees with non-FMLA absences are treated the same.

Waiver of Rights

The regulations prohibit an employee from waiving his or her FMLA rights. The new regulations propose modifying this to allow waivers of past FMLA claims without DOL or court approval.

Substitution of Paid Leave

The current and proposed regulations require that all forms of paid leave be treated the same. The DOL explains in the draft regulations that an employer can require, or an employee can elect, to substitute paid leave when the employee meets the requirements of the employer's paid leave policy; however, an employer cannot discriminate against FMLA in the administration of leave policies.

Fitness for Duty Certificates

Under the current regulations, employers can ask for certification that an employee is able to return to work under a uniformly applied policy. The proposed regulations add:

- ~ the certification can address the employee's ability to perform the essential functions of the job if the employer lists them in the designation notice; and
- ~ where reasonable job safety concerns exist, an employer can require fitness for duty certification for intermittent leave up to once every 30 days.

Holidays

Currently, if a holiday falls during a week of FMLA leave, an employer can count the entire week as FMLA time. The draft regs change this:

- ~ if an employee uses FMLA increments of less than a week, holidays may not be counted unless the employee was scheduled to work; and
- ~ if leave is taken in increments of one week or longer, the holiday may be counted as FMLA leave

City of Fitchburg Office of Human Resources
Application for Family or Medical Leave

Name: _____ Department: _____

Current Address: _____ City _____ Zip _____

Start Date of Anticipated Leave: _____

Expected Date of Return to Work: _____

Reason for Leave (Explain):

Note: An employee requesting leave for the employee's serious health condition or the serious health condition of the employee's spouse, child or parent must submit a verifying medical certification from a physician within 15 days of application for leave.

I hereby authorize a representative of the City of Fitchburg to contact my physician to verify the reason for my requesting family and medical leave.

I understand that a failure to return to work at the end of my leave period may be treated as a resignation unless an extension has been agreed upon and approved in writing the Mayor of the City of Fitchburg.

Employee Signature _____ Date _____

Supervisor Approval: _____ Date _____

Dir. Human Resources: _____ Date _____

Certification of Health Care Provider for
Employee's Serious Health Condition
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee's essential job functions: _____

Check if job description is attached: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: _____
First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: () Fax: ()

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

___ No ___ Yes. If so, dates of admission:

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? ___ No ___ Yes.

Was medication, other than over-the-counter medication, prescribed? ___ No ___ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

___ No ___ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ No ___ Yes. If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: ___ No ___ Yes.

If so, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☐ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☐ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?
☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☐ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?
☐ No ☐ Yes. If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Notice of Eligibility and Rights & Responsibilities
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

In general, to be eligible an employee must have worked for an employer for at least 12 months, have worked at least 1,250 hours in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

_____ The birth of a child, or placement of a child with you for adoption or foster care;

_____ Your own serious health condition;

_____ Because you are needed to care for your _____ spouse; _____ child; _____ parent due to his/her serious health condition.

_____ Because of a qualifying exigency arising out of the fact that your _____ spouse; _____ son or daughter; _____ parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves.

_____ Because you are the _____ spouse; _____ son or daughter; _____ parent; _____ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

_____ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)

_____ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

_____ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.

_____ You have not met the FMLA's 1,250-hours-worked requirement.

_____ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact _____ or view the

FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____.** (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

_____ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request _____ is/_____ is not enclosed.

_____ Sufficient documentation to establish the required relationship between you and your family member.

_____ Other information needed: _____

_____ No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

- _____ Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.
- _____ You will be required to use your available paid _____ sick, _____ vacation, and/or _____ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.
- _____ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We _____ have/_____ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.
- _____ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____.
(Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the reverse side of this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - _____ the calendar year (January – December).
 - _____ a fixed leave year based on _____.
 - _____ the 12-month period measured forward from the date of your first FMLA leave usage.
 - _____ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____.
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have _____ sick, _____ vacation, and/or _____ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

_____ For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____.

_____ Applicable conditions for use of paid leave: _____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

_____ at _____.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**